

allotment scheme.^{41/} Moreover, if the Commission concludes that it must delete vacant noncommercial allotments, the full-band approach would allow the Commission to replace, with digital channels, the maximum number of deleted vacant allotments.^{42/}

* * * * *

For all of these reasons, Public Television urges the Commission to utilize the full television spectrum in allocating DTV channels during the transition. This will avoid serious disruption of existing noncommercial broadcast services, facilitate a smooth and speedy transition to DTV service, and allow the Commission to realize the full benefits of its core spectrum approach at the end of the DTV transition period. Indeed, after channels outside the core region are cleared of broadcast users, they will be far more valuable for other uses than they would be during the DTV transition period under any of the proposed spectrum plans.^{43/}

D. The Commission Should Not Delete Vacant Noncommercial Channels Unless There Is No Other Way to Accommodate Existing Broadcasters With DTV Channels, and It Should Replace Any Deleted Noncommercial NTSC Channels With Noncommercial DTV Channels.

In earlier phases of this proceeding, the Commission has stated in the most emphatic terms its commitment not only to preserving vacant noncommercial NTSC channels but also to pairing digital channels with those vacant channels whenever possible:

^{41/} See id.

^{42/} See Section II.D. infra; Sixth Notice at ¶ 59. The Commission predicts that it could replace 326 of the 338 existing vacant noncommercial allotments if it used the full broadcast television spectrum. See id.

^{43/} See Broadcasters' Comments, Section III.B.3.

[W]e conclude that we will use vacant noncommercial allotments for ATV only where there is no feasible alternative for assigning an ATV channel to an existing broadcaster. Similarly, we will leave vacant noncommercial allotments without an ATV channel pair only when there is no other practicable way to award an existing broadcaster an ATV channel. We will in no event use a vacant VHF channel allotment reserved for noncommercial purposes for commercial ATV. Moreover, only as a last resort will we delete a reserved channel, or use for commercial purposes an ATV channel that would otherwise be paired with a vacant noncommercial allotment, where that channel or allotment would be necessary to provide first noncommercial full-service Grade B coverage to a community. As Public Television suggests, if it is impossible to pair an ATV channel with a vacant noncommercial allotment, we will protect the vacant allotment with both NTSC and ATV separation requirements. . . .^{44/}

This strong and unequivocal stance was consistent with the Commission's unbending resolve during the last four decades to preserve channels reserved for noncommercial use -- whether vacant or used by operating public television stations -- in order to preserve noncommercial television spectrum and provide a means for public television to grow. Indeed, since the Commission first reserved channels for noncommercial use in 1952, it has never dereserved a noncommercial channel without substituting another reserved channel.^{45/} In the Pittsburgh Case, decided less than three months ago, the Commission denied a request for dereservation of a noncommercial channel after reviewing the strong Congressional policy encouraging the growth of public broadcasting, concluding:

^{44/} Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340, 3350 (1992).

^{45/} See Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, 1996 FCC LEXIS 4078 (July 24, 1996) ("Pittsburgh Case"), at ¶ 18.

In short, the Commission has repeatedly favored the long-term structural integrity of its noncommercial channel allotments scheme, including the maintenance of channel capacity as a means of facilitating future growth, over the needs of particular licensees, both commercial and noncommercial.^{46/}

In the Sixth Notice, Commission now proposes for the first time to delete all vacant NTSC allotments, including those reserved for noncommercial use.^{47/} It states that it needs to use that vacant spectrum in order to accommodate all eligible broadcasters with digital allocations, avoid congestion and interference, and maximize the service areas of DTV stations.^{48/}

Public Television acknowledges the difficulties that the Commission faces in trying to allocate digital channels to all eligible broadcasters, but urges the Commission not to delete vacant reserved channels unless it concludes, on the basis of engineering analysis, that there is no other practicable way to accommodate all eligible broadcasters or to alleviate overcrowding in the broadcast spectrum. The Commission should make that assessment on a channel-by-channel basis, in each case considering alternative ways of accommodating existing broadcasters with DTV channels without deleting vacant noncommercial channels. Maintaining public broadcasting channel capacity is a bedrock Congressional and Commission policy that should not lightly be cast aside.^{49/}

^{46/} Pittsburgh Case at ¶ 20.

^{47/} See Sixth Notice at ¶ 58.

^{48/} Id.

^{49/} If the Commission is able to preserve some of the vacant noncommercial NTSC channels, it should, of course, waive the September 20, 1996 cut-off date so that noncommercial applicants can apply for those channels during the transition period.

The Commission should be particularly careful to protect vacant reserved NTSC channels in those cases where an applicant has already come forward and filed for the channel during the filing window that closed September 20, 1996 -- especially when the applicant proposes to bring a first noncommercial service to an area.^{50/} It often takes years to lay the groundwork for a noncommercial application for a vacant reserved channel, and it would be unjust, as well as contrary to the interests of the affected communities, for the Commission to reallocate a vacant reserved NTSC channel for DTV service at the eleventh hour and deny a pending application to use that channel to provide noncommercial service.

An application recently filed by KSMQ, licensee of channel 15 in Austin, Minnesota, illustrates the injustice of such a result. Parents, teachers, students and other residents of a number of small communities in the Rochester-Austin-Mason City DMA in southeastern Minnesota spent nearly six years trying to convince the Minnesota state legislature that they needed and deserved public television service. These communities do not presently receive any public television service. After an additional several years of work by KSMQ in consultation with the state legislature, the legislature finally appropriated funds on July 1, 1996 for KSMQ to build a transmitter in southeastern Minnesota. KSMQ obtained a transmitter site and filed an application on July 24, 1996 for vacant noncommercial channel 35 in Winona, Minnesota, only to learn in August that the Commission now proposes to reallocate that channel as a commercial DTV channel.^{51/} Other public television stations

^{50/} The same protection should be afforded in those cases in which the Commission allotted a new reserved NTSC channel after September 20 and accepted applications for the channel after that date (e.g., Waverly, New York, Channel *57).

^{51/} See Sixth Notice, Appendix B.

have also filed applications for NTSC channels that the Commission now proposes to reallocate for DTV, and many of those would provide a first local public television service.^{52/}

Under these circumstances, the greatest effort should be made to keep the noncommercial vacant allotments available to the communities that have waited so long and invested so much effort in their quest for public television service. Public Television is confident that a way can be found to preserve this and other reserved channels without denying DTV allotments to existing broadcasters.

If a situation arises in which the Commission cannot grant a pending application for a vacant noncommercial channel because of irresolvable conflicts with the table of digital allotments or because mutually exclusive applications for the vacant channel were filed, it should consider, either on its own motion or at the applicant's request, whether an alternative NTSC channel can be substituted for the existing channel.^{53/} If a substitute channel is

^{52/} For example, West Central Illinois Educational Telecommunications Corporation has applied for Channel *65 in Springfield, Illinois, but the Commission has proposed to allot that channel for DTV. The proposed noncommercial station would be the first full-service noncommercial station serving the state capital.

^{53/} In at least three instances involving reserved NTSC channels -- channel *27 at Coalinga, California, channel *40 at St. Louis, Missouri, and channel *30 at El Dorado, Arkansas -- petitions for rulemaking to substitute alternative NTSC channels were filed simultaneously with applications for the substituted channels. The Commission should waive its usual procedures to permit such petitions and applications to be considered together with the goal of allotting an NTSC channel at such locations and permitting the applicant to specify that channel in its application. In addition, a number of noncommercial educational NTSC applications have been filed that request waivers of the Commission's freeze on new applications within certain distances of the nation's largest television markets. In those instances where the channel specified in the application or some other channel can be accommodated consistent with the DTV allotment principles, the Commission should waive the freeze.

identified, the Commission should waive the cut-off date and permit the applicant to amend its application to specify that channel without opening up the filing to competing applications. Such a waiver would be warranted given the fluid and unpredictable state of the proposed table of digital allotments at the time the filing window closed.

If the Commission concludes, on the basis of engineering considerations, that there is no practical alternative to the deletion of some of the vacant reserved NTSC channels, then the Commission should, at the very least, protect public television channel reservations, as it proposes in the Sixth Notice, by allotting digital channels in the initial table of digital allotments to replace as many of the 338 deleted noncommercial NTSC channels as feasible under either the full spectrum or core spectrum approach.^{54/} Those channels should be reserved with a noncommercial designation.^{55/}

The rest of the vacant reserved channels deleted by the Commission should be replaced with digital channels reserved for noncommercial use when analog channels are returned at the end of the transition period. The Commission should initiate a proceeding at that time to make a public interest determination concerning the communities to which those channels should be allocated such that they would be of the greatest value in expanding the reach, increasing the diversity, or supporting the operations of public television service in

^{54/} The Commission indicates that 140 digital channels could be reserved for noncommercial use in channels 2 to 59 under its current allotment plan and that 326 channels could be reserved for noncommercial use under a full-band allotment plan. See Sixth Notice at ¶ 59.

^{55/} See Section II.B supra.

those communities.^{56/} Given the length of time that may pass before most of those channels become available and the competing demands for spectrum -- demands that are likely to grow even more heated in the years ahead -- the Commission should make its commitment to allocate those additional channels at the end of the transition unmistakably clear when it adopts the table of digital allotments in this proceeding.

The Commission can reconcile deletion of vacant noncommercial channels with its long-standing policy and statutory mandate to encourage the growth and development of public broadcasting only by replacing the deleted NTSC channels with digital channels (or committing to replace them at the end of the transition). Replacing those channels will also preserve one of the options seriously considered by Congress for stabilizing public broadcasting's financial footing. As the Commission is aware, Public Television has urged Congress to create a trust fund that would be authorized to auction some of the vacant noncommercial spectrum to raise funds to support public television operations and public television's transition to DTV.^{57/} Implementation of that idea is dependent, however, on the Commission's preservation of vacant noncommercial spectrum -- replacement digital channels, if not the original reserved NTSC channels. Public Television urges the

^{56/} The Commission should consider in its post-transition proceeding not only the allocation of vacant reserved channels to replace those that were lost, but also whether any vacant reserved channels allocated in the initial table of digital allotments -- e.g., the 140 channels the Commission says would be available in the initial table under the core spectrum approach -- should be reallocated to other communities which have a greater need for them. Clearly, the Commission will have greater flexibility after the transition period than it will have when it adopts the initial table to reserve channels where they are needed most.

^{57/} See Public Television Comments on Fourth Further Notice of Proposed Rule Making, November 20, 1995.

Commission to replace any deleted reserved NTSC channels with DTV channels so that this avenue of financial support for public broadcasting is not foreclosed before Congress is in a position to determine whether to implement this or other means of supporting public broadcasting.

E. The Commission Should Require DTV Stations to Operate at Reduced Power Where Necessary To Protect NTSC Stations From Interference During the Transition.

Earlier in this proceeding, the Commission proposed to give a "preference" to new DTV stations over NTSC stations in designing the table of digital allotments. In other words, when a choice must be made between providing a larger service area to a DTV station or protecting an NTSC station from interference, the Commission proposed to favor the DTV station.^{58/} It now proposes a more neutral approach, and states that the draft table of digital allotments has been designed to "minimize interference to all stations and to balance unavoidable interference among both NTSC and DTV stations equally."^{59/} It requests comment on whether it has struck the proper balance.

Public Television supports the Commission's more neutral approach in allocating DTV channels but believes that the Commission should take additional steps to protect NTSC stations from interference caused by DTV operations. There is no escaping the fact that most television viewers will continue to rely on NTSC service to receive broadcast television programming in whole or in part for many years after the Commission adopts the table of

^{58/} See Second Further Notice of Proposed Rule Making, 7 FCC Rcd 5376, 5380 (1992); Sixth Notice at ¶ 38.

^{59/} Sixth Notice at ¶ 39.

digital allotments. The Commission can impose deadlines on broadcasters to apply for digital channels and construct DTV stations, but it has no control over when consumers purchase digital television sets. And even after a household purchases its first digital television set, it is likely to continue relying on other NTSC sets for some of its television viewing. Broadcast stations, which must compete with many other video distributors, most of whom offer multichannel programming services, simply cannot afford to alienate a substantial portion of their viewers by suddenly delivering a deteriorated level of NTSC broadcast service.

For this reason, Public Television urges the Commission not only to adhere to its neutral stance in designing the table of digital allotments, but also to require DTV stations to operate at reduced power where necessary to protect NTSC stations from an increased level of interference within their Grade B contours during the transition period. At the end of the transition -- or during the transition period when a nearby NTSC station stops operating -- a DTV station that must operate at reduced power to avoid causing interference to an NTSC station will be able to commence full power operation. Thus, the impact on the DTV stations required to operate with reduced power will be limited as they will be able to operate with maximum facilities once they no longer cause interference to NTSC reception.^{60/}

^{60/} The Commission could revisit this policy during the transition and lift the requirement once DTV receivers reach a sufficient penetration level. At a certain penetration level, more viewers would be deprived of service by limiting the power of DTV stations than by requiring NTSC stations to reduce power.

F. The Commission Should Permit Licensees to Negotiate Changes in Their Channel Allotments.

The Commission acknowledges that the implementation of digital television will be a "dynamic process and that mechanisms are needed to accommodate the inevitable changes that will occur."^{61/} One way the Commission intends to accommodate such changes is through negotiated agreements among broadcasters regarding their NTSC/DTV channel pairings.^{62/} It recognizes that special circumstances in individual markets may lead stations to agree on different channel pairings from those adopted by the Commission, and proposes to accept negotiated changes, including those involving the payment of compensation by one station to another, provided all affected stations agree to them.

Public Television supports the Commission's proposal to permit negotiated changes to the NTSC/DTV channels pairings, including agreements for the payment of compensation. As the Commission recognizes, there are numerous variables that may affect the desirability of channels in individual markets, and the affected stations, including noncommercial stations, should have the freedom to negotiate changes in their channel assignments both before and after adoption of a table of digital allotments. Some stations may wish to negotiate changes in their NTSC channel assignments as well as their DTV channel assignments as part of a negotiated "re-pairing" of channels. For example, a station that has two channels in the high UHF band might wish to negotiate a channel change that would give it one low UHF channel, to be used during the transition period for its NTSC service and after the transition for its

^{61/} Sixth Notice at ¶ 44.

^{62/} See id. at ¶ 46-49.

DTV service. This kind of change, as well as changes in DTV allotments, should be permitted.

III. The Commission Should Limit Eligibility for DTV Licenses to Existing NTSC Licensees, Permittees and Applicants.

The Telecommunications Act of 1996 requires the Commission to limit eligibility for DTV licenses to existing broadcasters.^{63/} Furthermore, the Commission's objective in this proceeding is to effect a major technological improvement in broadcast television service,^{64/} and Public Television believes that limiting eligibility to existing television licensees, permittees and applicants is, in general, a reasonable way of achieving that objective as quickly and efficiently as possible. For these reasons, Public Television generally supports the eligibility criteria proposed in this proceeding.^{65/}

Public Television suggests one minor change in how the eligibility criteria should be applied to NTSC applicants. Although the Commission accepted applications for vacant NTSC allotments until September 20, 1996, the only applicants for NTSC channels that would be eligible for digital allotments under the proposed eligibility criteria are those that

^{63/} New Section 336(a) of the Communications Act provides that if the Commission decides to issue licenses for advanced television service, it "should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both). . . ." 47 U.S.C. § 336(a)(1996).

^{64/} See Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, 10 FCC Rcd 10540, 10544-45 (1995).

^{65/} See Sixth Notice at ¶ 10. The Commission should clarify, however, that these eligibility criteria would not apply to new unpaired noncommercial digital channels that the Commission allots during the transition to replace deleted vacant noncommercial channels. Any noncommercial entity that would now be eligible to apply for a reserved channel under Section 73.621 of the Commission's rules should be able to apply for those unpaired channels.

filed their applications on or before October 24, 1991.^{66/} The Commission's purpose in so limiting the eligibility of NTSC applicants was the entirely reasonable one of freezing the pool of "existing broadcasters" so as to increase the likelihood that the Commission would be able to accommodate all eligible broadcasters with DTV channels. But now that the Commission has proposed a draft table of digital allotments and the deadline for filing new NTSC applications has passed, it should review the applications for NTSC channels that were filed during the three-year period between the DTV eligibility cut-off date and the NTSC application cut-off date and determine whether it is possible to pair digital channels with any of those NTSC channels without disrupting the proposed digital allotment scheme.^{67/} It seems likely that, at a minimum, many applicants that filed for NTSC channels in rural areas can be accommodated with digital channels -- with more applicants being accommodated if the Commission utilizes the full broadcast spectrum during the transition. If so, there is no reason why they should not be accommodated, particularly when doing so will serve the public interest by expediting and expanding the availability of DTV service.

^{66/} See Sixth Notice at ¶ 60.

^{67/} Some of those applications have been granted and the facilities are already operating. For example, the University of North Carolina completed construction and commenced operation this year of WUNV-TV, Lumberton, North Carolina. Because it applied for the construction permit for that station in 1994, it is not eligible for a paired DTV channel for that station under the proposed eligibility criteria.

IV. The Commission Should Afford DTV Licensees Latitude to Select Which Channel They Will Use to Provide Permanent DTV Service and, if Their DTV Channel Is Outside the Core Region, To Defer Constructing a DTV Station Until a Core Channel Becomes Available.

The Commission clearly indicates its intention to recover one of the two channels on which existing broadcasters will operate during the transition period, and requests comment on how it should determine which channel will be permanently used to provide DTV service.^{68/} Public Television supports the Commission's proposal to allow licensees that have two channels within the core spectrum region to choose which of their two channels they will use to provide DTV service on a permanent basis and which to relinquish.^{69/} There may be significant differences in the propagation characteristics between two channels in a particular market, and the licensee is in the best position to assess which channel provides the best service to its community. In addition, the licensee may be able to operate on one channel at substantially lower cost than the other due to differences in the power levels needed on each channel to cover its service area. The Commission should give licensees the opportunity to realize such cost savings.^{70/}

While Public Television concurs with the Broadcasters that the Commission should not identify now which channels will be used for DTV after the transition, if the Commission

^{68/} Sixth Notice at ¶ 36. Recovery of one of the two channels is required by new Section 336(c) of the Communications Act. See 47 U.S.C. § 336(c)(1996).

^{69/} Id.

^{70/} The Commission should require licensees that are authorized to operate both NTSC and DTV channels to file notices with the Commission at appropriate times concerning (i) which of its two channels it intends to relinquish and (ii) when it intends to relinquish it. Such advance notices will allow those full-power stations that have DTV channels outside the core spectrum to identify channels that will become available within the core spectrum. They will also assist displaced translators find replacement channels.

does select the "core spectrum" before stations must construct their DTV stations, then special latitude should be afforded licensees that have one or two channels outside the core. A station that has an NTSC channel within the core spectrum and a DTV channel outside the core region may wish to defer commencing DTV service until such time as it concludes that NTSC service is no longer required within its service area and it can simply convert its NTSC channel to DTV operation. This would allow the station to avoid the expense of activating DTV service initially on one channel and later on another.^{71/}

A licensee that has a DTV channel within the core spectrum and an NTSC channel outside the core should be given the option of ceasing NTSC service early. Presumably, no licensee will voluntarily stop providing NTSC service unless it is confident that it can reach all or the vast majority of its audience with its DTV service. If a licensee reaches that conclusion before the end of the transition period, the Commission should not force it to continue providing NTSC service, particularly since early cessation of NTSC service would permit early spectrum recovery by the Commission.

Those licensees that have two channels outside the core region should be afforded relief in two ways. First, they should have first priority in applying for core channels that become available at the end of the transition period. Second, during the transition, they should be permitted to defer constructing DTV facilities until a channel becomes available

^{71/} If a station that has been assigned a DTV channel outside the core proposes a substitute channel in the core spectrum that is acceptable to other stations in the market, the Commission should approve that modification of the table even if the substitute channel does not replicate 100% of the licensee's NTSC coverage. A licensee should be able to sacrifice voluntarily some degree of replication in order to avoid moving its DTV operations to a new channel at the end of the transition or to save on power costs.

within the core spectrum so that they are not forced to activate DTV service first on one channel and later another. Channels within the core spectrum will probably not become available until the end of or late in the transition period. Stations that do not have even one channel within the core spectrum will have to weigh the additional costs associated with activating DTV service on a channel outside the core spectrum and later moving their DTV service to a new channel against the disadvantage they face in the market by not offering digital service until the end of the transition.^{72/} The Commission should allow these stations to make that business decision rather than imposing it on them.

Since the majority of television stations will have two channels within the core spectrum, affording stations with one or two channels outside the core spectrum this degree of flexibility will not slow the introduction of DTV service. While a few stations may elect to defer commencement of DTV service because they do not have a DTV channel within the core spectrum, most stations will have two channels within the core and thus will be required to commence DTV service in accordance with the schedule established by the Commission in this proceeding. Thus, consumers will have ample incentive to invest in digital sets. Moreover, even stations that are given the option of delaying commencement of DTV service may decide that marketplace forces require them to commence DTV service sooner than they are legally required to do so in order to preserve their audience.

^{72/} While the costs of moving to a core channel may ultimately be reimbursed by new spectrum users, the broadcast licensee will nevertheless have to incur these costs initially.

Public Television urges the Commission to permit all television stations, whether or not they have two channels within the core spectrum region, to switch their DTV and NTSC services between their two channels at any time during the transition period, provided the shifting of services between the two channels does not cause additional interference to another station. A station that has an NTSC channel within the core spectrum region and a DTV channel at a higher frequency outside the band might prefer at some point during the transition, when DTV set penetration reaches a certain level, to offer DTV service on its lower frequency channel. It should be afforded the flexibility to do so.

Public Television also suggests that if an NTSC licensee is not assigned a digital channel -- which may happen if it applied for its NTSC channel after October 24, 1991 and it cannot be accommodated under the Commission's digital allotment plan -- it should be allowed to convert from NTSC to digital operation on its channel at any time during the transition period (assuming its NTSC channel is within the core spectrum).^{73/} Such a licensee will have strong incentives to convert to DTV operation when the demand for DTV service in its market exceeds the demand for NTSC service. That will be a delicate calculus, and one that the licensee will be in the best position to make based on DTV penetration in its market. Clearly, there is no reason for the Commission to substitute its judgment on this issue for that of the licensee.

^{73/} Translators and low power stations, which will not be assigned DTV channels, should also be permitted to convert to digital transmissions at any time during the transition period.

Finally, Public Television strongly supports the Commission's proposal to require new non-broadcast users that displace broadcasters from a reallocated portion of the broadcast spectrum to compensate them for the cost of relocating their channels to the core spectrum. It would be unreasonable to expect stations to invest in DTV facilities during the transition and then have to incur the cost of moving those facilities at the end of the transition to make way for a new spectrum user.^{74/}

V. Vacated Channels in the Core Spectrum Region Should Be Used First to Replace Any Deleted Noncommercial Vacant Allotments and to Accommodate Displaced Noncommercial Translators.

As the Commission recognizes, a substantial number of additional channels within the core spectrum region will become available at the end of the transition period when NTSC stations cease operating. The Commission requests comment on the purposes for which it should make these channels available -- whether for use by existing broadcasters or by new station applicants.^{75/}

As discussed above, Public Television strongly urges the Commission to replace with digital channels any vacant noncommercial NTSC channels that it concludes must be deleted in order to accommodate all eligible broadcasters in the initial table of digital allotments.^{76/} To the extent that it is able to do so, the Commission should replace deleted noncommercial allotments with DTV channels in the initial table of digital allotments. But if there are not a sufficient number of digital channels available at the outset to replace all of the deleted

^{74/} See Sixth Notice at ¶ 26.

^{75/} Sixth Notice at ¶ 50-51.

^{76/} See Section I.D. supra.

channels -- which the Commission indicates will be the case^{77/} -- the Commission should establish as an allotment priority the replacement of those channels at the end of the transition. Once existing full service stations that have both NTSC and DTV channels outside the core have received an in-core digital channel,^{78/} the Commission should allocate noncommercial digital channels to replace any vacant noncommercial NTSC allotments that are deleted. The Commission should take this action in a rulemaking proceeding before it considers making any recovered channels in the core spectrum available for any other purpose.

In addition, the Commission should give noncommercial translators priority in using newly available spectrum. As discussed above,^{79/} translators are of critical importance to the delivery of noncommercial television service. Given the substantial adverse impact that the digital allocations will have on translators and the long-standing Commission and Congressional policy favoring the provision of public broadcast service to as much of the nation as possible,^{80/} the Commission should give noncommercial translators priority in using vacant television channels during and after the transition period.

Public Television suggests that this priority be afforded in two ways. First, until one year after DTV stations are required to commence operation, the Commission should make vacant noncommercial DTV channels (e.g., the 140 or so channels that the Commission

^{77/} See Sixth Notice at ¶ 59.

^{78/} See Section IV. supra.

^{79/} See Section II.C. supra.

^{80/} As shown in Section II.C., that impact is likely to be much more severe than projected by the Commission.

indicates it could reserve for noncommercial television in the initial table of DTV allotments using the core spectrum approach) available only for noncommercial translator service except, of course, where an applicant proposes to operate a full service noncommercial station on the channel.^{81/} Under current rules, commercial translators and low power television stations can apply to use vacant reserved noncommercial channels, and those applicants have equal priority with noncommercial translator applicants.^{82/} Since the allotment of digital channels is likely to have a severely disruptive effect on noncommercial television service because of its dependence on translators, the Commission should facilitate the restoration of lost noncommercial television service by giving noncommercial entities the first opportunity to replace translators that were forced to go dark during the transition. At the same time, by limiting the priority to a relatively short period of time, the Commission will not permit the spectrum to lie fallow if noncommercial translators do not apply for the channels.

Second, noncommercial translators that (i) provide a first noncommercial television service to an area and (ii) were required to cease operation as a result of the commencement of DTV service should be given a preference over other translator and low power television station applicants for all digital channels that become available in their service areas until one year after the end of the DTV transition period.^{83/} Such a preference is justified by the

^{81/} Public Television proposes that this priority last until one year after DTV stations are required to commence operation because that is when noncommercial translators will experience the full impact of DTV displacement of their facilities.

^{82/} See 47 C.F.R. § 74.702 (1995).

^{83/} This preference should last until one year after the end of the transition period because new channels will not become available in the core spectrum until NTSC stations relinquish their channels at the end of the transition. This will provide maximum flexibility for the replacement of translators offering first noncommercial television service.

strong and continuing federal policy favoring the provision of public television service to as much of the country as feasible.

In 1962, Congress adopted the Educational Television Facilities Act, authorizing funds for the construction of educational television stations so as to assure service to "the greatest number of persons. . . ."^{84/} In 1967, Congress reiterated that policy in the Public Broadcasting Act of 1967, which provided additional funding to "improve the facilities and program quality of the nation's educational broadcasting stations. . . ."^{85/} And thirty years after it first appropriated funds for educational television, Congress adopted the Public Telecommunications Facilities Act of 1992, which added a new section to the Communications Act declaring:

[I]t is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate, available telecommunications distribution technologies. . . .^{86/}

This long-standing federal policy justifies giving a preference to noncommercial translators that provide the only noncommercial television service to an area and that are forced off the air as a result of the commencement of DTV service. Thus, during the

^{84/} Educational Television Facilities Act, Pub. L. No. 87-447, 76 Stat. 64 (1962), reprinted in 1962 U.S.C.C.A.N. 79, 81.

^{85/} Public Broadcasting Act of 1967, Pub. L. No. 90-129, 81 Stat. 365 (1967), S. Rep. No. 222, 90th Cong., 1st Sess. 1 (1967), reprinted in 1967 U.S.C.C.A.N. 1772.

^{86/} Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (Aug. 26, 1992) (codified as amended in scattered sections of 47 U.S.C. § 151 et seq.), reprinted in 1992 U.S.C.C.A.N. 839, 840 (emphasis added). This federal policy is also reflected in the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (Oct. 5, 1992), reprinted in 1992 U.S.C.C.A.N. 1460, which requires cable carriage of public television programming on cable systems and the reservation of direct broadcast satellite channel capacity for public television programming.

transition period and for a one-year period thereafter, if a commercial translator or low power television application is mutually exclusive with a noncommercial television translator that was forced off the air by DTV service, the noncommercial translator application should be granted if it provides a first public television service to a community.

VI. The Commission Should Take Steps to Ameliorate the Impact of DTV Allocations on Noncommercial Translator Service.

As explained above, noncommercial translators play a vital role in filling in white areas within the contours of public television stations and in bringing public television service to areas that are rural or surrounded by rough terrain.^{87/} Public Television has also demonstrated the severe impact that the allocation of DTV spectrum will have on noncommercial translators. While that impact will be much more severe if the Commission adheres to its proposed "core spectrum" approach, some translators will be affected by the allocation of DTV channels even if the Commission uses the full broadcast spectrum during the transition. There are a number of modest measures that the Commission can and should take that will lessen the impact of DTV service on the transmission of noncommercial television service by television translators without interfering with the introduction of DTV service.

First, the Commission should permit translators to continue operating on channels both within and outside the core spectrum until such time as a DTV station or other licensee is ready to commence service on the channel being used by the translator or another channel

^{87/} See Section II.C. supra.

subject to interference by the translator's operations.^{88/} There is no reason to force translators off the air prematurely, and the chances that they will be able to find a suitable replacement channel for their services increases if they can operate on their current channel through most of the transition because the relinquishment of NTSC channels will eventually free up substantial additional broadcast spectrum within the core spectrum region.

Second, the Commission should adopt its proposal to permit displaced translator and low power television licensees and permittees to file for a replacement channel in the same area without being subject to competing applications.^{89/} This right should also apply when a translator is displaced (or soon to be displaced) by a non-broadcast licensee in a reallocated portion of the broadcast band. When an existing translator is simply seeking a replacement channel upon being displaced from its channel by a new user, it should not be forced to compete with applicants proposing new low power or television translator stations.

Third, new non-broadcast users of reallocated spectrum should be required to compensate translator and low power licensees that they displace for the costs those licensees incur in moving to a new channel. Public Television does not believe, however, that new DTV licensees should be required to compensate translator or low power licensees for moving

^{88/} The Commission seems to contemplate such continued operations by low power television stations but does not indicate whether the same latitude will be afforded translators. See Sixth Notice at ¶ 67. There is no reason not to.

^{89/} See Sixth Notice at ¶ 67. The Commission currently allows translators and low power stations displaced by a full power station to change channels without waiting for a window. 47 C.F.R. § 73.3572(a)(2).

costs since the latter constructed their facilities with the knowledge that were secondary to, and could be displaced by, full-service broadcast facilities.^{90/}

Fourth, as proposed above,^{91/} noncommercial translator applicants should be given a preference over commercial translator and low power applicants in applying for (i) new vacant digital channels reserved for noncommercial use for a period ending one year after DTV stations are required to commence operation; and (ii) other digital channels, if the noncommercial translator was displaced by a new user and provided noncommercial television service to an otherwise unserved area, until one year after the DTV transition ends.^{92/}

Finally, the Commission should make it clear that noncommercial television translators, whether operating in accordance with NTSC or DTV technical standards, qualify for carriage on cable systems under Section 615 of the Communications Act. Section 615 explicitly requires carriage of noncommercial educational translators with five watts or higher power serving a cable franchise area.^{93/} Public Television demonstrated in its Comments on the Commission's Fourth Further Notice of Proposed Rulemaking in this proceeding that the must-carry requirements should apply to both NTSC and DTV signals during the transition period, given the statutory language, the policy underlying the statute, and the fact that the burden on cable systems will not be increased materially by this interpretation of the must-

^{90/} If the Commission does require all new licensees, broadcast as well as non-broadcast, to compensate displaced translator and low power stations, it should exempt noncommercial DTV stations from that obligation. It would simply be inappropriate to require a non-profit licensee to compensate a commercial licensee for its moving expenses.

^{91/} See Section V supra.

^{92/} See Section V supra.

^{93/} 47 U.S.C. § 535(l)(1)(1996).

carry requirements.^{94/} Thus, whether a noncommercial translator operating at the requisite power level is transmitting an NTSC or DTV signal, it should be entitled to cable carriage.

VII. Public Television Supports the Broadcasters' Call For An Industry Committee To Recommend a DTV Frequency Labeling Plan.

The Commission requests comment on the kind of frequency labeling scheme that should be employed for the DTV service.^{95/} Public Television concurs with the Broadcasters' recommendation that an industry committee comprised of representatives of the broadcasting, cable and equipment manufacturing industries should be organized to recommend a frequency labeling scheme to the Commission.^{96/} The committee's goal should be formulation of a frequency labeling scheme that will allow viewers to readily identify the DTV channels that correspond with NTSC channels, and that will preserve DTV stations' channel identity without regard to any changes in DTV frequencies that may occur during or after the transition. This issue deserves careful analysis and input by all affected industries since a viewer-friendly channel labeling scheme will help speed viewer acceptance of the new DTV service.

VIII. The Commission Should Continue Accepting Applications To Modify NTSC and DTV Facilities and Assess Proposals Based On Interference Criteria.

Although the Commission has stopped accepting applications for new NTSC stations, it proposes to continue permitting licensees of NTSC stations to file applications to modify

^{94/} See Public Television Comments filed November 20, 1995, at 30-34.

^{95/} Sixth Notice at ¶ 78-79.

^{96/} Broadcasters Comments, Section VI.C.

their technical facilities throughout the DTV transition period.^{97/} Such applications may include, for example, proposals to modify power, antenna height or transmitter location. A licensee might also want to propose at some stage during the transition to reverse the channels on which it offers DTV and NTSC service (*i.e.*, that it provide NTSC service on its DTV channel and DTV service on its NTSC channel).^{98/}

Public Television supports the Commission's proposal to continue accepting applications to modify NTSC facilities, and to condition the grant of such modifications on consistency with the final table of DTV allotments. The Commission should continue accepting such applications not only before it adopts a final table of DTV allotments, but throughout the DTV transition period as well. Television stations will continue to operate their NTSC facilities for several years, and will have the same need to modify their facilities during that period as they have in the past. Indeed, the complications introduced by the commencement of DTV service by stations across the county may increase the need for stations to modify their NTSC facilities.

Of course, DTV stations, as well as NTSC stations, should be permitted to modify their facilities throughout the transition period. Licensees of new DTV facilities may well need to make adjustments in their technical facilities during the early years of DTV service. Among other modifications, they may want to expand their digital service areas either during

^{97/} See Sixth Notice at ¶ 63.

^{98/} See Section IV supra.